

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT :	Lundy LEWIS	CONFIRMATION NO.:	3633
SERIAL NUMBER :	09/577,232	EXAMINER:	David E. England
FILING DATE :	May 23, 2000	ART UNIT:	2143
FOR :	METHOD AND APPARATUS FOR SERVICE ANALYSIS IN SERVICE LEVEL MANAGEMENT (SLM)		

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**Appellant's Reply Brief  
Under 37 C.F.R. § 41.41**

**Mail Stop Appeal Brief - Patents**

Commissioner for Patents  
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**I. Introduction**

Appellant is filing this Reply Brief within two months of the Examiner's Answer dated August 13, 2007 (hereinafter "Answer"). This Reply Brief responds to the new points raised by the Examiner in the Answer in response to Appellant's Brief on Appeal filed April 23, 2007.

**II. Status of Claims**

Pending claims 31-59, which are presently on appeal, stand rejected as follows:

- (1) Claims 31-32, 34-36, 38-43, 45-47, 49-51, 53-57, and 59 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,233,449 to Glitho et al. ("Glitho").
- (2) Claims 33 and 48 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Glitho in view of U.S. Patent No. 6,449,603 to Hunter ("Hunter").
- (3) Claims 37, 44, 52, and 58 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Glitho in view of U.S. Patent No. 6,249,755 to Yemini et al. ("Yemini").

**III. Response to Examiner's Arguments**

In the Answer, the Examiner continues to allege that Glitho teaches the features of “measuring a component parameter . . . indicating an operational characteristic of the at least one network component,” “determining a service parameter representative of a measure of performance of the service,” and “determining an effect of the measured component parameter on the state of the service parameter,” as recited in independent claim 31, for example. Independent claims 39, 46, 53, and 59 each include similar features to those recited in independent claim 31.

More particularly, the Examiner has responded to Appellant's arguments presented in the Appeal Brief, which pointed out the deficiencies of the rejections, by alleging that “the limitation of ‘determining a service parameter representative of a measure of performance of the service’ can be interpreted as determining or monitoring *bandwidth or any service* in a Quality of Service (QoS) system.” Answer at 11 (emphasis added). Thus, in taking this position, the Examiner alleges that determining a “service,” in itself, is the equivalent of “determining a service parameter *representative of* a measure of performance of the service.” In other words, the Examiner alleges that a “service” is the same as the “service parameter” representing the performance of the service. Thus, the Examiner has, in essence, disregarded the context in which the claimed invention sets forth the features at issue. Determining or monitoring a service in a QoS system is not the same as “determining *a service parameter* representative of a measure of performance *of the service*.” Accordingly, for at least the reason that Glitho fails to disclose using “bandwidth or any service” as “a service parameter representative of a measure of performance of the service,” the new points raised by the Examiner fail to overcome the previously discussed deficiencies of the rejection.

Furthermore, the Examiner quotes the passages of Glitho at col. 4, line 55 et seq. in support of the allegations discussed above. For example, the Examiner identifies Glitho's discussion of “a Performance and Quality of Service (QoS) Monitoring (PQSM) function,” which is used “to monitor performance and QoS in the network” according to various performance thresholds. See Glitho at col. 4, lines 55-64. Thus, the Examiner summarily concludes “that if there is a threshold that would mean a measurement of *some sort* would have to be

determined either by measuring or calculations *of a measurement*.” Answer at 12 (emphasis added). Appellant responds by noting that the claimed invention does not simply recite “some sort” of measurement, and does not circularly recite measuring or calculating “a measurement.” Rather, the claimed invention expressly recites, among other things, “*measuring a component parameter . . . indicating an operational characteristic of the at least one network component.*” The Examiner’s alleging that Glitho discloses “some sort” of measurement, even if true (which Appellant does not concede), falls far short of establishing that Glitho discloses “*measuring a component parameter . . . indicating an operational characteristic of the at least one network component.*” In fact, Glitho actually indicates that the inputs provided to the PQSM function include raw data, which has been preprocessed “to compress the data and sort it according to logical groups.” Glitho at col. 4, lines 49-64. Thus, for at least the reason that preprocessed, compressed, and sorted data do not indicate “an operational characteristic of . . . at least one network component,” the new points raised by the Examiner fail to establish that Glitho determines QoS conformity by “measuring a component parameter . . . indicating an operational characteristic of the at least one network component.”

The Examiner’s misinterpretation of the claimed invention, and the resultant misapplication of Glitho against the claimed invention, is further made apparent from the subsequent points raised by the Examiner. For example, the Examiner alleges that the “effect that the parameter has on the state of the service is that the quality agreed upon is not being met and the effect will cause the prior art of Glitho [to] determine what it is and how to fix the problem so that the system will be up to the agreed upon threshold.” Answer at 12. In response to this argument, Appellant redirects attention to the specific claim language at issue. Specifically, the claimed invention expressly recites measuring certain information (i.e., a “component parameter”), determining a way to represent service performance (i.e., using a “service parameter”), and then determining a relationship between the measured information and the represented service performance (i.e., “the measured component parameter” effects “the state of the service parameter”). On the other hand, the Examiner alleges that Glitho discloses these features by *first* determining that the agreed upon QoS is not being provided

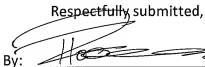
and *then* determining “how to fix the problem.” The mechanisms used to diagnose causes of degraded QoS are irrelevant to the claimed features of “determining an effect of the measured component parameter on the state of the service parameter,” among others. For example, Appellant’s claimed invention relates to “measuring a component parameter,” and based thereon, “determining an effect of the *measured* component parameter on the state of the service parameter.” In other words, Appellant’s claimed invention describes a mechanism for establishing “the state of the service parameter” from a “measured component parameter,” wherein the “state [of the service parameter is] used to determine conformity of the service to the agreed upon service level.” The Examiner, by contrast, continues to rely upon passages in Glitho which attempt to diagnose degraded QoS after the fact. Glitho does not, however, disclose determining QoS conformity in the manner recited by the claimed invention.

As such, the Examiner’s continued reliance Glitho’s discussion of suggested actions for correcting or restoring QoS to “find the problem and fix it” is irrelevant to the establish that Glitho discloses the aforementioned features recited in the claimed invention. Accordingly, the rejection is improper for at least the reasons advanced in the Appeal Brief, showing how Glitho fails to disclose the aforementioned features of the claimed invention. Furthermore, the rejection is also improper for at least the reason that the new points raised by the Examiner fail to cure the deficiencies of the rejections as previously addressed in the Appeal Brief. As such, Appellant maintains that the rejections are improper and should be reversed.

**Conclusion**

For at least the foregoing reasons, Appellant respectfully appeals to this Honorable Board to promptly reverse the rejections, and to issue a decision in favor in Appellant, as all of the pending claims are in condition for allowance.

Date: **October 15, 2007**

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